

## **Remarks**

Claims 1-6 were pending and under consideration. With this Amendment, claim 1 is being amended and claims 2-6 are being canceled, without prejudice against their reintroduction into this or one or more timely filed continuation, divisional or continuation-in-part applications. Upon entry of this Amendment, claim 1 will be pending. The amendments of the claims and the various rejections raised in the Office Action are discussed in more detail, below.

### **I. Preliminary remarks**

Applicants wish to thank the Examiner for a prompt Advisory Action, including the note setting forth suggested allowable claim language. Additionally, Applicants respectfully call the Examiner's attention to the Revocation and Grant of Power of Attorney filed on 24 December 2008.

### **II. Amendments**

#### **A. In the Specification**

The Abstract has been amended to recite a grammatically complete sentence. In view of this amendment, Applicants respectfully request withdrawal of the objection.

#### **B. In the Claims**

Claim 1 is amended to include the elements of claims 2 and 4 through 6, and in accord with the Examiner's suggestion.

No new matter is added by way of these amendments.

### **III. Rejection under 35 U.S.C. §103**

Claims 1-6 remain rejected under 35 U.S.C. §103(a) as allegedly obvious over Tanaka *et al.* (JP2001029075, hereinafter "Tanaka").

This rejection is respectfully traversed with respect to amended claim 1 and moot with respect to canceled claims 2-6.

#### **A. The Present Claims**

As amended, claim 1 relates to a method for transforming rice, comprising a step of infecting a germinated intact rice seed with an *Agrobacterium* which contains a desired recombinant gene, wherein the seed is germinated by being subjected to pre-culture with a medium containing the growth factor 2,4-D for 1 day after sowing.

#### **B. The Cited Art**

Tanaka describe a method for transforming a rice seed comprising incubating the rice seed in a medium containing 2,4-D (a plant growth factor) for 5 days, followed by co-cultivation

with *Agrobacterium*. Tanaka also describe transformation with *Agrobacterium* containing a desired recombination gene. Tanaka do not teach or suggest preculture for 1 to 3 days.

C. Analysis

As noted by the Examiner, in the previous Office Action mailed 25 February 2008, Applicants were invited to provide evidence of unexpected results, and provided a post-filing reference by Toki, *et al.* (The Plant Journal (2006) 47:969-976) which demonstrates the superior results achieved when intact rice seeds were precultured for only one day on medium containing the auxin 2,4-D. The Examiner acknowledges that this is a surprising result for the protocol carried out by Toki, *et al.*, but states that the present claims are not "limited in scope to a method that utilizes intact rice seeds and subjects the intact rice seed to only 1 day of preculture in a medium containing 2,4-D" (page 4 of Office Action mailed 6 October 2008).

Applicants have amended claim 1 to require that the seed is an intact rice seed, and that the growth factor is 2,4-D. In view of these amendments and the surprising results achieved with the claimed method, Applicants submit that the claimed subject matter patentably defines over the cited reference, and respectfully request withdrawal of the rejection under 35 U.S.C. § 103.

In view of the foregoing, claim 1 is believed to satisfy all of the criteria for patentability and is in condition for Allowance. An early indication of the same is therefore kindly requested.

No fees are believed to be due in connection with this Amendment. However, the Commissioner is authorized to charge any additional fees that may be required, or credit any overpayment, to King & Spalding LLP Deposit Account No. 50-4616.

If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is encouraged to call the undersigned at (650) 590-1932.

Respectfully submitted,  
KING & SPALDING LLP

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